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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 95-44

In the Matter of

Amendment of Section 73.202(b), RM-8602
Table of Allotments,
FM Broadcast Stations.
(Fair Bluff, North Carolina)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 26, 1995;

Released: August 2, 1995

By the Chief, Policy & Rules Division:

1. At the request of Atlantic Broadcasting Co., Inc. ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 10 FCC Rcd 4018 (1995), alternatively proposing the deletion of vacant and unapplied-for Channel 287A at Fair Bluff, North Carolina, or the retention of the channel with a 12.7 kilometer (7.9 mile) northeast site restriction. Comments were filed by the petitioner, reiterating its desire to have Channel 287A deleted from Fair Bluff, and by S.O.S. Broadcasting ("SOS"), Jack Miller ("Miller") and Robert Gauss ("Gauss"), each expressing an intention to apply for Channel 287A at Fair Bluff. Reply comments were filed by the petitioner.

2. Petitioner, licensee of Station WDAR-FM, Channel 288C3, Darlington, South Carolina, currently operates with a directional antenna to protect the Fair Bluff allotment. It requested the deletion or site restriction of Channel 287A at Fair Bluff to accommodate Station WDAR-FM's pending application specifying non-directional operation (BMPH-950224ID). Miller, in stating his intention to apply for the channel, stated that he had no objection to the imposition of the proposed site restriction while Gauss was silent on the issue. SOS, however, objects to the site restriction, stating that the site restriction could "seriously" impair the viability of the station because of the "limited" principal community contour coverage capability of Class A stations. In addition, it believes the site restriction may make it extremely difficult, if not impossible, to locate an acceptable transmitter site given current local regulatory difficulties in establishing transmitter sites. SOS submits that the Commission prefers the establishment of new broadcast service over the enhancement of existing services, citing *Andalusia, Alabama*, 49 FR 32201 (1984). Because the petitioner has not shown that the imposition of the site restriction is the only way in which the station can achieve omnidirectional operation or that Station WDAR-FM's current coverage is inadequate, it urges the retention of Channel 287A at Fair Bluff without the proposed site restriction.

3. In response, petitioner states that the public interest would be served by imposing the proposed site restriction on Channel 287A at Fair Bluff because Station WDAR-FM will be able to provide service to an additional 3,800 people, while also permitting Fair Bluff to retain the FM channel. Petitioner states that SOS is the only party to object to the imposition of the site restriction, pointing out that neither Miller nor Gauss objected to the imposition of the proposed site restriction, with Miller affirmatively stating that it had no objection. It states that the reasons for SOS's objections, that the site restriction could make it difficult to provide Fair Bluff with the required city-grade signal and that general regulatory difficulties may make it difficult to locate an acceptable transmitter site, are wrong. Petitioner states that it has not only located a proposed transmitter site (at coordinates 34-21-08 North Latitude; 78-54-07 West Longitude) only 0.86 kilometers from the suggested reference coordinates from which a station could provide Fair Bluff with the required 70 dBu city-grade signal but also obtained permission to construct a transmitter. In addition, petitioner submits that it has contacted officials with the Columbus County building permit office who stated that they did not see any reason why a building permit would not be issued for the proposed facility and foresaw no local zoning problems. Finally, petitioner states that its technical consultant believes a proposed 105 meter tower would have no detrimental aeronautical effect since the site is approximately 20 kilometers from the nearest airport and thus FAA approval would be given.

DISCUSSION

4. We believe the public interest would be served by retaining Channel 287A at Fair Bluff since interests have been expressed in activating the channel. We also believe that the public interest would be served by site restricting the Fair Bluff allotment as proposed in the *Notice* so as to enable Station WDAR-FM to expand its service area by operating omnidirectionally. While SOS has raised objections to the proposed site restriction, we find that its objections are only speculative. SOS states that the proposed site restriction could "seriously" harm the viability of the prospective station because of the limited city-grade contour of a Class A station. However, it provides no technical showing that a station operating within the site restricted area could not provide the required signal level to all of Fair Bluff. The Commission assumes, at the allotment stage, that a Class A station can provide principal city coverage to its community of license if the transmitter is situated no more than 16.2 kilometers (10.1 miles) from the center of the community. Here, the site restriction being imposed on Channel 287A is 12.7 kilometers (7.9 miles). SOS also opposed the imposition of the site restriction based on the possibility that local regulatory policies could make it difficult to locate an acceptable transmitter site within the permissible site restricted area. However, SOS again has failed to provide any evidence that such problems exist or are even likely. To the contrary, petitioner, based on conversations with local officials, states that the officials see no reason why permission to construct a transmitter should pose any zoning or other local problems.

TECHNICAL SUMMARY

5. Channel 287A can be retained at Fair Bluff with a site restriction of 12.7 kilometers (7.9 miles) northeast to accommodate petitioner's pending application.¹ Use of these coordinates shows a short-spacing to Station WYNA, Channel 285A, Tabor City, North Carolina. However, Station WYNA has been modified to specify operation on Channel 285C3 and its community of license has been changed to Calabash, North Carolina, pursuant to MM Docket No. 93-249 (9 FCC Rcd 7857 (1994)). While Station WYNA has filed an application (ARN-959512IB) specifying a transmitter site which complies with the spacing requirements to Channel 287A at Fair Bluff at the coordinates specified herein, final licensing of a Fair Bluff Channel 287A station may be withheld pending the licensing of Station WYNA at Calabash.

6. Accordingly, IT IS ORDERED, That the petition of Atlantic Broadcasting Company, Inc. (RM-8602) IS GRANTED IN PART AND DENIED IN PART.

7. The window period for filing applications for Channel 287A at Fair Bluff, North Carolina, will open on **September 18, 1995**, and close on **October 19, 1995**.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

Douglas W. Webbink
Chief, Policy and Rules Division
Mass Media Bureau

¹ The coordinates for Channel 287A at Fair Bluff are 34-21-22

North Latitude and 78-54-36 West Longitude.